

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmd.uscourts.gov**

IN RE:

CASE NO.: 6:15-bk-01810-CCJ

CONEPCION SABORIDO,

Chapter 13

Debtor.

_____ /

**EMERGENCY MOTION TO REOPEN CHAPTER 13 CASE SOLELY FOR
DETERMINATION OF STAY RELIEF AND RE-CLOSING CASE THEREAFTER
(EMERGENCY HEARING REQUESTED)**

Interested Party, Crystal Clear Holdings LLC, Movant herein (“Crystal”, “Movant” or the “Purchaser”), by and through undersigned counsel, files this their *Emergency Motion to Reopen Chapter 13 Case Solely for Determination of Stay Relief and Re-closing Case Thereafter* (the “Motion”) pursuant to 11 U.S.C. §105 (a), and 11 U.S.C. § 362(d)(1), (2)(A), and in support thereof states:

I. JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue of the now dismissed instant case is being contested pursuant to 28 U.S.C §1408(1).

II. FACTUAL BACKGROUND

3. Pre-petition, on or about April 30, 2014, a foreclosure action was filed against

Conepcion (aka Concepcion) Saborido, as to her homestead property located at 140 East 46 Street, Hialeah, FL 33013 (the "Property"), which is legally described as:

LOT 5, BLOCK 2, LUCY LEE SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 58, PAGE 17 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

4. On January 21, 2015, a Final *Judgement of Foreclosure* was entered and a sale date of March 4, 2015 scheduled.

5. The sale occurred on March 4, 2015 and on March 9, 2015 a Certificate of Sale was issued and on April 7, 2015 a Certificate of Title was issued, both to Crystal Clear Holdings, LLC.

6. On or about March 16, 2015 the Debtor filed an *Objection to Sale*, stating that the Debtor had filed a bankruptcy case prior to the sale date.

7. A review of the bankruptcy case filings in the Southern District of Florida revealed no such bankruptcy filing. No Suggestion of Bankruptcy was filed in the foreclosure case.

8. The objection to the sale was denied and an *Order Issuing Title and Writ of Possession* was entered on April 1, 2015.

9. Conepcion Saborido was evicted from the residence on April 28, 2015.

10. Unbeknownst to any of the parties in the state court foreclosure proceedings, Conepcion Saborido ("Saborido" or the "Debtor") filed a voluntary Chapter 13 petition pro se on or about March 3, 2015 (a day prior to the foreclosure sale date) before this Court, in an incorrect and foreign venue.

11. Saborido filed the case *pro se*, and an application to pay the filing fees in

installments (which challenges the debtor's ability to fund a Chapter 13 plan). However, this was a "bare bones" filing and no schedules, statement of financial affairs, Chapter 13 plan or credit counseling documents were filed.

12. An *Order Dismissing Case* was entered on March 18, 2015 (Doc #13).

13. After Saborido was evicted from the premises, the Purchaser, as Movant herein, first became aware of this case filing.

14. The Debtor has filed *Debtor's Motion to Shorten the Prejudice Period "Emergency Hearing Requested"* (Doc #17) and then filed a *Notice of Withdrawal of Debtor's Motion to Shorten Prejudice Period* (Doc #19).

15. The Movant filed an *Objection to Debtor's Motion to Shorten the Prejudice Period [Doc #17] - Due to Improper Venue* (Doc #20) - at about the same time as the Notice of Withdrawal, it would seem.

16. Saborido's state court counsel also filed an *Emergency Motion to Vacate Foreclosure Sale and Cancel the Issuance of Certificate of Title* (the "Motion to Vacate") in the state court proceedings. (See attached Exhibit "A").

17. A hearing on the Motion to Vacate was heard by the state court judge on Wednesday, April 29, 2015 at 9:00 a.m. (See attached Exhibit "B").

18. At the hearing on the Motion to Vacate the state court judge continued the hearing for 30 days to allow the Movant to seek stay relief *nunc pro tunc* before this Court in order to allow the timely issuance of the Certificate of Sale and all subsequent proceedings.

19. This is not a case where a debtor files a Chapter 13 case to cure arrearages or to seek refinancing through a mortgage modification in order to save their homestead property.

20. This is a case where the Debtor paid less than the required filing fee, filed a bare

bones petition in a foreign venue, and failed to file any of the other required documents, etc., delayed filing any further notices or Suggestions of Bankruptcy, and otherwise failed to prosecute this case, which demonstrates Debtor's bad faith attempts to wrongfully stop the foreclosure process.

21. While it is always regrettable when an individual loses their homestead property, the rights to retain these property interests include certain acts which the Debtor has failed to timely and effectively perform.

WHEREFORE, Crystal Clear Holdings, LLC, Movant herein, respectfully requests an Order of this Court reopening this Chapter 13 case for the sole purpose of considering this Motion for stay relief and for this Court's determination that no stay was in effect emanating from this wrongful filing or granting stay relief *nunc pro tunc* to the petition filing date to allow Movant to proceed with its rightful possession of the Property at issue, and re-closing this case thereafter and for such other and further relief as this Court determines to be equitable and just.

CERTIFICATE OF ADMISSION

I HEREBY CERTIFY that I am a member of the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

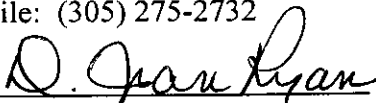
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion will be served in conjunction with the forth coming notice of hearing, via CM/ECF upon all registered users of CM/ECF in this case; via electronic transmission upon Interested Party Crystal Clear Holdings LLC, 10021 SW 139 St., Miami, FL 33176 and c/o Albert Rey, Esq.,

adrey@bellsouth.net; and via U.S. mail upon: Robert Sanchez, Esq., counsel for the Debtor, 355 West 49 Street, Hialeah, FL 33012; and all parties on the attached service list.

RYAN LAW FIRM, P.A.

Counsel for Interested Party, Crystal Clear Holdings LLC
8500 SW 92nd Street, Suite 202
Miami, Florida 33156
Telephone: (305) 275-2733
Facsimile: (305) 275-2732

By: 

D. Jean Ryan
Florida Bar No. 396818
jryan@ryanlawpa.com

Filing # 26600748 E-Filed 04/28/2015 09:58:25 AM

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2014-011426-CA 01
DIV. 10

SUN WEST MORTGAGE CO,
Plaintiff (s),

VS.

CONCEPCION SABORIDO, et al,
Defendant (s).

EMERGENCY
MOTION TO VACATE FORECLOSURE SALE AND
CANCEL THE ISSUANCE OF CERTIFICATE OF TITLE

COMES NOW, Defendant by and through undersigned counsel pursuant to rule 1.540 (b) Defendant seeks Relief from judgment and to cancel sale date.

1. On March 4, 2015 the herein subject property went into public sale through Miami Dade County Court.
2. On March 3, 2015 Defendant had filed PRO SE Chapter 13 Bankruptcy Petition with pursuant to 11 USC section 362 includes automatic stay of all pending state court actions including foreclosure sales that are pending.
3. Accordingly, the clerk should vacate the sale, return the funds to plaintiff, cancel the certificate of title that was issued and stay the proceedings.
4. On March 4th, property sale took place and title was subsequently transferred to Plaintiff.
5. On April 25, defendant's contracted for Bankruptcy counsel to come on board and take over the filing in order to complete the filing requirements and present an adequate protection payment to the Plaintiff, Notice of Appearance attached.
6. Defendant new chapter 13 plan includes payments to the mortgage.
7. At the present time this is defendant's primary property, defendant's Family has no other place to relocate.

WHEREFORE, the Defendant hereby request to this honorable court enter an order cancelling Foreclosure Sale and consequently to cancel the issuance of certificate of title.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document attached hereto has been furnished via U.S. Mail to: Albert D. Rey, PA, 12955 Southwest 42 Street, Suite 6, Miami, Florida 33175 this 28th day of April, 2015.

SIXTO & ASSOCIATES, P.A.
ATTORNEY FOR DEFENDANT
900 WEST 49ST, STE. 410
Hialeah FL 33012
Tel. (305) 558-0460
Fax. (305) 558-8251
Email: civilpleadings@gmail.com


ALEJANDRO L. SIXTO, ESQ.
FLORIDA BAR No: 0653756

Exhibit "A"

Filing # 26628521 E-Filed 04/28/2015 02:41:32 PM

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2014-011426-CA 01
DIV. 10

SUN WEST MORTGAGE CO,
Plaintiff (s),

VS.

CONCEPCION SABORIDO, et al,
Defendant (s).

NOTICE OF HEARING SET

PLEASE TAKE NOTICE that the above styled case will be called for Emergency Hearing on April 29, 2015 at 09:00 AM, in front of the honorable Judge PETER LOPEZ Room 12-1 at the MIAMI-DADE COUNTY COURTHOUSE 73 WEST FLAGLER ST MIAMI, FL 33130 on the above captioned matter. Reserved 5 minutes for DEFENDANT'S MOTION TO VACATE FORECLOSURE SALE AND CANCEL THE ISSUANCE OF CERTIFICATE OF TITLE.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document attached hereto has been furnished via U.S. Mail to: Albert D. Rey, PA, 12955 Southwest 42 Street, Suite 6, Miami, Florida 33175 this 28 day of April, 2015.

SIXTO & ASSOCIATES, P.A.
ATTORNEY FOR DEFENDANT
900 West 49 Street, Suite 410
Hialeah FL 33012
(305)558-0460
(305)558-8261 Fax
E-mail: civilpleadings@gmail.com


ALEJANDRO L. SIXTO, ESQ.
FLORIDA BAR No: 0652756

900W

Exhibit "B"

Label Matrix for local noticing
113A-6
Case 6:15-bk-01810-CCJ
Middle District of Florida
Orlando
Mon May 4 15:46:30 EDT 2015

Conepcion Saborido
140 East 46 St
Hialeah, FL 33013-1834

Miami-Dade County Tax Collector
200 NW 2nd Avenue
Miami FL 33128-1733

D Jean Ryan +
Ryan & Dunn PA
Post Office Box 561507
Miami, FL 33256-1507

End of Label Matrix
Mailable recipients 11
Bypassed recipients 0
Total 11

Crystal Clear Holdings LLC
c/o D. Jean Ryan, Esq.
Ryan Law Firm, P.A.
8500 SW 92 Street
Suite 202
Miami, FL 33156-7379
Florida Department of Revenue
Bankruptcy Unit
Post Office Box 6668
Tallahassee FL 32314-6668

Recovery Management Systems Corporation
25 S.E. 2nd Avenue, Suite 1120
Miami, FL 33131-1605

Robert Sanchez +
Robert Sanchez PA
355 W 49th Street
Hialeah, FL 33012-3715

Recovery Management Systems Corp.
Attn: Ramesh Singh
25 SE Second Avenue, Ste 1120
Miami, FL 33131-1605

Internal Revenue Service
Post Office Box 7346
Philadelphia PA 19101-7346

Laurie K Weatherford +
Post Office Box 3450
Winter Park, FL 32790-3450

United States Trustee - ORL7/13 7+
Office of the United States Trustee
George C Young Federal Building
400 West Washington Street, Suite 1100
Orlando, FL 32801-2210